

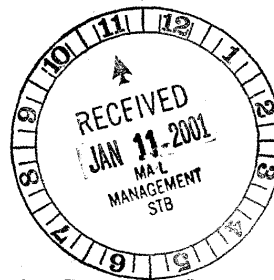
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Procter & Gamble

The Procter & Gamble Company
General Offices
1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315

January 10, 2001

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street NW
Washington, DC 20423-0001



Re: STB Ex Parte No. 582 (Sub-No. 1), "Major Rail Consolidation Procedure"

Dear Secretary Williams,

Enclosed for filing in the above-referenced matter are an original and 25 copies of the Rebuttal Comments of The Procter & Gamble Company, together with a WordPerfect diskette. A certificate of service accompanies the document.

If there are any questions concerning this matter, please call the undersigned at (513) 983-6748.

Sincerely yours,

Michael R. Benoit
North America Rail Process Manager
The Procter & Gamble Company

ENTERED
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Public Record

201237

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary
JAN 11 2001
Part of
Public Record

STB Ex Parte 582 (Sub-No. 1)
Major Rail Consolidation Procedures



REBUTTAL COMMENTS

submitted by

The Procter & Gamble Company

Michael R. Benoit
N.A. Rail Transportation Manager
The Procter & Gamble Company
1 Procter & Gamble Plaza
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Due: January 11, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte 582 (Sub-No. 1)

Major Rail Consolidation Procedures

REBUTTAL COMMENTS

submitted by

The Procter & Gamble Company



The Procter & Gamble Company ("P&G") respectfully submits these rebuttal comments to the Surface Transportation Board ("STB" or "Board") in response to the Notice of Proposed Rulemaking ("NPR") served by the STB on October 3, 2000.

Introduction

The reply comments of most of the Class I Railroads appear to suggest that the concept of the STB holding them accountable for delivering the promised benefits of a merger is not acceptable to them. In addition, the concept of directly preserving competition or enhancing competition as a condition of a merger transaction, or under any conditions for that matter, merger related or not, is equally unacceptable to them. On the other hand, reply comments of several shippers suggest that these two concepts are very important and must be contained in the new merger rules with greater specificity than that which currently exists. The railroads have, through their responses, tipped their hand relative to their intentions in future mergers. The

proposed rules clearly do not go far enough in specifying how the types of problems seen in previous mergers should be addressed. The wording and the content of the rules leave many of the critical issues, to include competition and delivering on promised public benefits, to be resolved at the discretion of the merging railroads. However, if the railroads cannot accept these two concepts during these merger rulemaking proceedings, they certainly will not go out of their way to address these issues in future mergers. The result, as some shippers have already pointed out, will be a continuation of the status quo.

Given the generally opposing views of the railroads and the shippers, it is clear to P&G that the Board will need to develop rules that will provide maximum direction to the merger applicants relative to the achievement of the Board's policy goal, namely, that mergers should preserve and enhance competition . It would also make sense that maximum direction be given to the merger applicants relative to other issues such as delivering on promised public benefits, to include improved service and greater economic efficiencies. The Board needs to include specific remedies for these types of issues in the final rules, as well as meaningful objective standards by which the Board can evaluate a merger application and approve or deny it as appropriate. As P&G explained in our Opening Comments filed November 17, 2000, the Board should not take on the role of completing the application for the merger applicants by adding conditions to the merger. If the Board develops in advance new merger rules that contain a set of consistent standards and criteria to be applied to the merger application, along with expected types of remedies for the typical issues caused by mergers, to include failure to achieve the promised benefits, then merger applicants

should come forward with a proposal that represents the commitments that they are willing to make. The Board should then approve or deny the merger based on the pre-established criteria.

Competition

P&G would like to reiterate that a future merger that causes any level of decrease in competition would be unacceptable. The Comments filed by several railroad parties not only rejected the concept of enhancing competition, but also continued to suggest that it was appropriate to offer remedies that would offset competitive harms. The current level of rail-to-rail competition is not adequate, and it is P&G's opinion that any competitive harm due to a future merger should have a direct remedy so as to prevent the further decline of rail-to-rail competition for shippers. The first priority in any merger should be to address any and all competitive harms with direct remedies. After this has been achieved, the application should be reviewed for proposals to provide general enhanced rail-to-rail competition as an added benefit.

However, P&G agrees with other shipper Comments that the preferred approach to enhancing competition would be to expand this to the entire rail industry, as opposed to just merging carriers. If this is not appropriate to be accomplished via this merger rulemaking proceeding, then an additional proceeding should be initiated to address this issue.

In addition, the rules need specific requirements to define the concepts of the preservation or enhancement of competition. Once again, the Comments filed by several railroad parties suggests that this is not needed. P&G believes that these comments indeed suggest the opposite, namely, that if the railroads are not receptive to

the concepts at all, then the Board will need to define specific requirements to mitigate the anti-competitive effects of a proposed merger and to define in advance what would qualify as valid enhancements to existing rail-to-rail competition.

Public Benefits

The railroads have offered a number of explanations as to why it would not make sense to hold them accountable to deliver their promised public benefits. P&G is concerned that these explanations sound more like an admission on the part of the Class I railroads that their past round of mergers, as well as any future mergers, have lead and will lead to systems that are too large to control. If the railroads indicate that they can't be held accountable for their promises because they can't predict what the outcomes of their merger will be, they are also saying that they really don't know if there will be any benefits. P&G does not understand how the railroads can on one hand sell a merger to the Board by making promises of public benefits, yet, on the other hand, tell the Board that they can't be held accountable for these promises because the new system will be too complex to predict the outcome. P&G suggests that the Board include meaningful and enforceable penalties if the promised benefits are not realized, and if a merger applicant does not want to be held accountable for these promised results, then the Board should conclude that the promised benefits are only estimates and reject them from the application.

Summary and Conclusion

The Board will have ultimate responsibility for not only achieving the goals it has set forth relative to rail mergers, but for shaping the future of the railroad industry. From a shipper's perspective, P&G believes that it is imperative that rail-to-rail competition

be, first of all, directly preserved in all merger transactions, and then enhanced in general as a merger benefit. The ideal, whether through this proceeding or by some other means, would be to first enhance competition across the railroad industry, and then to evaluate any merger applications after this improvement has been made. In addition, merger applicants should be held accountable for their promises.

P&G is concerned, but by no means surprised, by the position that the railroads have taken about the proposed rules, and specifically about the concept of being held accountable for promised benefits and the concept of directly preserving competition or enhancing competition. There is still an obvious desire to proceed with more mergers.

It is clear that the first obligation of each railroad is to its shareholders. However, what is also clear is that the past round of mergers has done nothing to impress Wall Street or railroad shareholders. In fact, most railroads have had their stock values decrease as a result of their merger, and the climb back to their previous level has taken, or will take, several years. Railroads like the BNSF and the CN will claim that their results since their mergers are "excellent", with most key business areas, such as safety, transit times, cost, etc. showing improvement trends. However, these "excellent" results have failed to impress their shareholders or Wall Street. Yet, the Class I railroads are still showing a desire to merge again. This doesn't make good business sense, unless there is a belief on the part of the Class I railroads that they can produce the **profit results** that Wall Street is expecting from them, profit results that far exceed what they are currently achieving. P&G is concerned that the path to increased profits for the railroads will be via the elimination of competition. Many shippers have voiced concerns about future mergers, if subject to the proposed merger rules as they

currently exist, leading to, among other competitive issues, an increase in captive shippers and a decrease in competitive choices for inter-line moves. This type of decrease in competition can lead to Class I railroad pricing strategies that will achieve profit levels that will delight Wall Street. Unfortunately, unrestrained increases in rail transportation costs for shippers will have a negative impact that will most likely outweigh the positive aspects of having two wealthy railroads in North America.

P&G is hopeful that the Board will make the changes needed to strengthen the proposed merger rules. Strong rail-to-rail competition is a must in the future of the rail industry. If concentrated market power is not constrained by effective rail-to-rail competition, it will need to be constrained by increased regulation. P&G would prefer to see the Board develop and implement new merger rules that will lead to an increase in rail-to-rail competition, which would thereby negate the need for increased regulation.

Respectfully submitted,

By: Michael R. Benoit

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North America Rail Process Manager

Dated: January 10, 2001

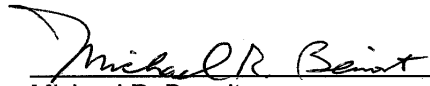
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of January, 2001, he served a true and correct copy of the above and foregoing document on all parties of record on the Service List (Appendix A of the Notice To Parties in this proceeding served April 28, 2000) in accordance with the Surface Transportation Board's Rules of Practice by:

X United States mail, first class postage prepaid

_____ Facsimile transmission

_____ Hand delivery



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